

# Chapter H4: Earned income – self-employed earnings

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# Chapter H4: Earned income - self-employed earnings

## Introduction

H4001 Guidance in this chapter covers

1. what S/E earnings are
2. determining gainful self-employment
3. the minimum income floor
4. the start-up period
5. the treatment of S/E earnings including permitted expenses.

## Meaning of claimant

H4002 Claimant means<sup>1</sup> either

1. a single claimant for UC **or**
2. each of joint claimants for UC.

*1 WR Act 12, s 40*

## Earned income

H4003 Earned income means<sup>1</sup>

1. the remuneration or profit derived from
  - 1.1 employment under a contract of service or in an office (including elective office) **or**
  - 1.2 a trade, profession or vocation **or**
  - 1.3 any other paid work **or**
2. any income treated as earned income for the purposes of UC.

**Note:** Paid work in 1.3 means<sup>2</sup> work done for payment or in expectation of payment. It does not include work performed for a charitable or voluntary organisation or as a volunteer where the only payment received in any of those cases is in respect of expenses.

*1 UC Regs, reg 52; 2 reg 2*

H4004 The words “derived from” mean having their origins in<sup>1</sup>. Payments for past, present and future work should be treated as earnings unless specifically excluded.

*1 R(SB) 21/86*

H4005 A S/E person derives earned income from a

1. trade
2. profession **or**
3. vocation.

These are known as S/E earnings<sup>1</sup>. See H4012 et seq for guidance on trades, professions and vocations.

*1 UC Regs, reg 57(1)*

## **The general principles of earned income**

### **Actual amounts**

H4006 Calculating a person's earned income for UC in respect of an assessment period should be based on the **actual** amounts received in that period<sup>1</sup>. Any exceptions to this rule – for example, the minimum income floor and from 11.4.18, self-employed losses in digital/ full service areas, are described in this guidance.

*1 UC Regs, reg 54(1)*

### **Example**

Nils is in receipt of UC and works on a S/E basis as a music teacher. When assessing Nils' earned income for an assessment period, the DM applies the guidance in this chapter to the actual income less permitted expenses. The resulting figure is Nils' earned income for the assessment period.

### **Deciding entitlement before the end of the first assessment period**

H4007 Where

1. the DM is determining whether the claimant is entitled to UC on income grounds **and**
2. that determination is before the end of the first assessment period for that claim to UC

then the amount of earnings used to determine whether the financial conditions for UC are met may be based on an estimate of the amount received or to be received<sup>1</sup>.

*1 UC Regs, reg 54(2)(a)*

### **Failure to report earnings**

H4008 Where

1. the claimant has failed to report their earned income in relation to an assessment period **and**

2. the DM makes a determination as to the amount of earned income in that assessment period

then the amount of earnings for that assessment period may be based on an estimate of the amount received or to be received<sup>1</sup>.

*1 UC Regs, reg 54(2)(b)*

### **Example**

Lyndon is gainfully S/E and in receipt of UC. The minimum income floor does not apply to him because he is still in the start-up period. In each of the last six assessment periods, Lyndon has reported his S/E earnings and they have worked out at about £120. Lyndon informs the DWP seven days after the end of his assessment period that he is in hospital following an accident two days earlier and expects to be there for five weeks. He is able to provide a Doctor's letter to that effect. Nobody else can access his business accounts so he will be unable to report his S/E earnings for the previous period within the required timescales but believes his earnings were similar to those of the last few assessment periods. The DM decides to use an estimate of £120 for the purposes of Lyndon's S/E earnings for the latest assessment period.

- H4009 The decision as to whether or not to use an estimate should be based on the facts of each individual case.

### **Example**

Andrew is self-employed and in receipt of UC. He contacts the department on the last day of his assessment period to say he is out of town for the week on business and will not be able to access his accounts and work out his S/E earnings until he returns. The DM decides that in this case no estimate should be made and advises Andrew that he can report his earnings when he returns so that his UC can be calculated and paid. The DM reminds Andrew of the timescales within which he can report.

## **What self-employed earnings are**

**[See Memo ADM 11/20]**

- H4010 **[See Memo ADM 10/20]** S/E earnings consist of income that a person derives from carrying on a trade, profession or vocation and which isn't employed earnings<sup>1</sup>.

**Note:** Employed earnings are earnings derived from employment under a contract of service or as the holder of an office (including elective office)<sup>2</sup>. ADM Chapter H3 provides guidance on employed earnings.

*1 UC Regs, reg 57(1); 2 reg 55(2)*

- H4011 The identification of whether the claimant is in receipt of S/E earnings forms part of the test for gainful self-employment. H4020 et seq provides guidance on the gainful

self-employment test. Regardless of whether a claimant is determined to be in gainful self-employment or not, the DM has to decide how S/E earnings will affect an award of UC.

## **Trade, profession or vocation**

H4012 The concept of trade, profession or vocation has its origins in tax law. A trade, profession or vocation may be carried on by a person

1. on a sole trader basis **or**
2. in partnership with others.

### **A trade**

H4013 In order to recognise whether a person is engaged in a trade, the DM should have regard to

1. whether there is a profit seeking motive (regardless of whether or not a profit is actually made)
2. the frequency and number of similar transactions. The more frequently that a transaction is carried out, the more likely that this is trading
3. whether assets are modified in order to make them more attractive for a person to buy. If this is the case then this is likely to point towards a trade
4. the nature of the asset. Was the asset bought simply to sell on for a profit?
5. whether there is a connection with an existing trade. If a person sells something unconnected with what they normally do by way of work then this may point towards a person not trading
6. the financing arrangements. Where an asset is bought with a short-term loan which is to be funded by selling the asset again then this points towards trading
7. the length of ownership. The longer that an asset is owned, the more unlikely that the sale of it constitutes trading
8. the reason for the acquisition and sale.

In some circumstances the existence of just one of the above may be enough to show that a person is trading. In other cases, a combination of the above may show that a person is trading.

### **Example 1**

Bridget buys some gold and silver in order to sell on using a short-term loan. Bridget cannot afford to pay the interest on the loan from her own resources. However, once she sells the gold and silver then she repays the loan and also makes a profit. The DM determines that Bridget is engaged in a trade because she has a profit seeking

motive. The assets were bought to sell on for a profit with the aid of the short-term loan.

The DM will then need to consider whether the self-employment activity is gainful self-employment. See H4020 et seq for guidance on gainful self-employment for UC.

### **Example 2**

Mark has had a long interest in classic cars. He owns two and has had them both for a number of years. After losing his job, Mark decides to sell both of the cars because he can no longer afford the upkeep on them. The DM determines that Mark is not engaged in a trade and that he has just sold personal possessions of which he has had ownership for a number of years in a one off transaction.

### **Example 3**

Warren buys 10,000 toilet rolls from a wholesaler with the intention to sell them for profit. He sells these in a single transaction to a restaurant chain for a profit. The DM determines Warren is engaged in a trade because his motive was profit seeking and the number of the toilet rolls he bought suggests they were bought to sell on for profit, not for his own use.

The DM will then need to consider whether the self-employment activity is gainful self-employment. See H4020 et seq for guidance on gainful self-employment for UC.

### **Example 4**

Roy is a plasterer. He has been working as a plasterer for the past year but has not made a profit from the work. Roy wants to make a profit but is running at a loss. The DM determines that Roy is engaged in a trade notwithstanding the loss he is making because his motivation is to make a profit.

The DM will then need to consider whether the self-employment activity is gainful self-employment See H4020 et seq for guidance on gainful self-employment for UC.

## **A profession**

H4014 Examples of professions include

1. accountancy
2. the law
3. consultancy.

Whilst it may be clear that a person is engaged in a profession, in order for the earnings from a profession to be S/E earnings then the profession has to be carried out in a capacity other than as an employed earner.



### **Example 1**

Ros is a solicitor and works for a government department. Ros is employed as a civil servant and is subject to a contract of service. Whilst Ros' work as a solicitor is classed as a profession, the earnings received from her profession are not S/E earnings.

### **Example 2**

Jeremy is an accountant. He works for himself and completes accounts for a number of clients. The earnings that Jeremy receives are from his profession as an accountant and are earnings from self-employment.

The DM will then need to consider whether the self-employment activity is gainful self-employment See H4020 et seq for guidance on gainful self-employment for UC.

## **A vocation**

H4015 Examples of vocations include

1. sport
2. music
3. acting.

In order for the earnings from a vocation to be S/E earnings then the vocation has to be carried out in a capacity other than as an employed earner.

### **Example**

Keith is a darts player. He plays in tournaments around the country and competes for prize money on his own account. The DM determines that Keith's dart playing is a vocation and the income derived from this vocation is S/E earnings.

The DM will then need to consider whether the self-employment activity is gainful self-employment. See H4020 et seq for guidance on gainful self-employment for UC.

## **Assessing if earnings are from self-employed activity**

H4016 To assess if a claimant's earnings are S/E earnings for the purposes of UC, regard should be had to a number of factors and weighing up the answers to

1. what form does remuneration take? Where tax is deducted at source, this may suggest that the employment is not self-employment
2. is the claimant's work supervised? If they have control over agreeing to conduct work, fixing the price of work or how long the job may take this may point towards self-employment If the claimant has own control over their costs, this may point towards self-employment

3. does the claimant have the powers of appointment and dismissal and can they employ a substitute, for example to cover holidays or sickness? A power to appoint a substitute may point towards self-employment
4. how long in duration are the contracts of work? Short contracts may point towards self-employment
5. does the claimant provide their own investment, for example, equipment. Provision of own equipment and tools may point towards self-employment
6. where does the claimant work? If they work from home, or a workshop or office they own or rent, this may point towards self-employment
7. is the person who engages the claimant for work obliged to provide work? If there is no obligation then this may point towards self-employment
8. does the claimant have discretion over the hours they work? The greater the discretion then it is more likely that the work is self-employment.

**Note:** A determination that a person has earnings from self-employment does not necessarily mean that for the purposes of UC, they are gainfully S/E. See H4020 et seq for guidance on gainful self-employment for UC.

#### **Example 1**

Leo works as a steward at race courses throughout the country. The work depends on the frequency of race meetings at the race courses to which he is prepared to travel. Leo only works when a race meeting is on and then only for the duration of each meeting. Some meetings last for five days whilst others just for one. The race courses differ on how they calculate remuneration. Some of the courses pay per hour, whilst some calculate a daily rate. The frequency of payment varies too with some courses paying monthly whilst others pay after each period of work. When at work, Leo is instructed as to his duties by a supervisor and any payment of tax and NI is deducted at source. Leo sometimes provides his own clothing for work but at some courses a uniform is provided. Leo has no discretion to the hours that he works but he is not obliged to accept employment from race courses and can decide which meetings to attend.

After considering the evidence, the DM determines that, for UC purposes Leo's earnings are not from S/E activity but rather they are from employed activity.

#### **Example 2**

Polly is a proof reader. She does work for various publishing houses. The frequency of the work varies and is difficult to predict. When she has work, Polly works from home and for the hours which suit her within the deadlines set by the publishing houses. Polly provides her own dictionaries and reference books for her own use. She is paid for each completed piece of proof reading. Tax is not deducted when

she is paid for her work and Polly completes a self-assessment calculation for HMRC.

After considering the evidence, the DM determines that, for UC purposes Polly is S/E and her earnings are from S/E activity. The DM will then need to consider whether the activity is gainful self-employment. See H4020 et seq for guidance on gainful self-employment for UC.

H4017 A determination that a person has earnings from self-employment for UC is not decisive for other purposes and nor is the DM bound by a determination made by a DM in another government department.

H4018 If the person has ceased self-employment the DM should consider if

1. there are any capital assets from the business **and**
2. any capital assets from the business should be disregarded (see ADM Chapter H2 for guidance on the treatment of the business assets)<sup>1</sup>.

*1 UC Regs, Sch 10, para 8*

H4019

## Gainful self-employment

**[See Memo ADM 04/20]**

H4020 The determination as to whether a claimant is in gainful self-employment for UC purposes is important. This is because it determines whether the

1. minimum income floor applies to the claimant's S/E earnings<sup>1</sup> **and**
2. claimant is eligible for a start-up period<sup>2</sup>.

The determination may also have an impact on the work-related requirements which the claimant is subject to. ADM Chapter J3 provides guidance on the work-related requirements.

*1 UC Regs, reg 62(1); 2 reg 63(1)*

H4021 It is for the Secretary of State to determine who is in gainfully S/E for the purposes of UC. This determination should be made after information has been gathered from the claimant. This will take place at a Gateway Interview shortly after a claim for UC has been made.

H4022 A claimant is in gainfully S/E where<sup>1</sup> for the purposes of UC, the Secretary of State has determined that

1. the claimant is carrying on a trade, profession or vocation as their **main** employment **and**
2. their earnings from that trade, profession or vocation are S/E earnings (see H4012 et seq) **and**

3. the trade, profession or vocation is organised, developed, regular and carried on in expectation of profit.

In order to be in gainful self-employment for the purposes of UC, **1.**, **2.** and **3.** have **all** to be satisfied. If any of those are not satisfied then the claimant cannot be in gainful self-employment.

*1 UC Regs, reg 64*

## **The gainful self-employment test: main employment**

H4023 As part of the gainful self-employment test, the DM needs to decide if the trade, profession or vocation is the claimant's **main** employment<sup>1</sup>. This is the case for claimants who are

1. only undertaking S/E activity but on a few hours or low paid basis **and**
2. both S/E and also working as an employed earner.

*1 UC Regs, reg 64(1)(a)*

H4024 In determining whether self-employment is the person's main employment, the DM should consider whether self-employment is the

1. main employment activity **and**
2. claimant's main employment goal.

H4025 Evidence gathered at the Gateway Interview (or elsewhere) which may indicate whether the trade, profession or vocation is the main employment include

1. a statement of the number of hours spent on the activity **and**
2. the claimant's intention as to which activity is their main form of employment **and**
3. the amount of earnings from the S/E activity.

H4026 - H4029

H4030 To determine whether the S/E activity is the main employment, the DM needs to consider the amount of available work hours spent on it.

H4031 The S/E activity is likely to be the claimant's main employment where the claimant

1. undertakes only S/E activity and it occupies a significant proportion of their expected number of hours per week. S/E activity which accounts for more than half the expected number of hours is very likely to show that self-employment is the main employment **or**
2. undertakes both S/E and employed earners activity and the S/E activity takes up more time than the employed activity (but also have regard to H4032 **2.**) **or**

3. is starting a new business and the types of activities outlined in H4053 take up most of their expected number of hours per week.

### **Example**

George is a trained hairdresser. He has lost his job at the salon where he worked. George does, however, still cut hair for some private clients. He does this on an ad-hoc basis and charges just a small fee to cover his costs. In the course of a week, George probably spends about 18 hours on hairdressing and earns on average £80. George has stated that he is not looking to increase his client base or his earnings.

George spends more than half of his working hours on self employment. The activity is seen as his main form of employment.

The DM has to consider whether the earnings are S/E earnings and whether the activity is organised, developed, regular and carried on in expectation of profit.

- H4032 The S/E activity is unlikely to be the claimant's main employment where the claimant
1. undertakes only S/E activity and that activity occupies significantly less than half the expected hours **or**
  2. undertakes S/E and employed earners activity and the S/E activity takes up more time than time spent on employed activity but still only represents a small proportion of the expected hours of work (but also have regard to H4034 1.)

### **Example**

Ziggy plays guitar and every fortnight performs at his local pub. He plays for about two hours and receives £20 for each performance. The pub where Ziggy plays advertise the nights that Ziggy performs. Ziggy does not play anywhere else and regards the fortnightly performances as a bit of fun.

Ziggy only spends a few hours on the S/E activity and receives a low wage. The DM determines that the self-employment is not Ziggy's main form of employment.

He is therefore determined by the DM to not be gainfully S/E because the self-employment is not Ziggy's main employment.

### **Other factors to consider**

- H4033 Whilst hours are a good indicator of someone's main employment, it is not the only factor that a DM should consider in reaching a determination. The DM should consider other factors such as
1. the amount of income received from each employment **and**
  2. whether the S/E activity is the claimant's main goal.

H4034 The S/E activity is **likely** to be the claimant's main employment where the claimant

1. undertakes S/E activity for a small number of hours each week but is receiving a high hourly return on the activity **or**
2. works more hours on employed earners employment but receives a greater proportion of their income from S/E activity.

#### **Example 1**

Jos works as a bouncer in a nightclub. He has a contract of employment with one nightclub and works on a S/E basis for another establishment. His contract of employment is for 12 hours per week and he is paid £80. He spends on average six hours per week on self-employment, which earns him about £140. Jos advertises his business in the local press and actively markets his services on his website.

Jos spends more time on his PAYE employment, however he earns more from his self-employment. The DM therefore needs to look at both in order to make a determination. Based on the earnings, the DM determines that Jos' main employment is his S/E work.

Based on a determination that self-employment is Jos' main employment, that the earnings are S/E earnings and that it is organised, developed, regular and carried on in expectation of profit (see H4050 et seq), the DM determines that Jos is gainfully S/E.

#### **Example 2**

Kendra makes a claim for UC and here expected hours of work for UC are 35. She is an animal lover and has a small business as a pet walker and pet sitter. She spends about 12 hours a week walking dogs for clients and checking on the pets of owners who have gone on holiday. Kendra charges for these services and earns about £160 a week from them. She has no other employment. She has begun advertising with leaflets and distributing business cards and has plans to increase the locations where she is available to take on work.

Kendra spend less than half her available hours on her S/E activity, however she receives a relatively high wage from the activity. The DM considers both hours and earnings and decides that the S/E activity is her main employment due to the income it generates.

The DM then has to determine whether Kendra meets the other parts of the gainful self-employment test.

H4035 The S/E activity is **unlikely** to be the claimant's main employment where the claimant spends

1. marginally over half the expected hours engaged in S/E activity but receives only limited income from the activity and/or has very limited opportunity to expand the business **or**
2. marginally more time on S/E activity than employed activity but receives a significantly larger proportion of their earnings from the employed activity.

### **Example 1**

Jasumati has been a portrait artist for over three years. She spends around 18 hours a week on her S/E work and she earns around £60 a week from this activity. Her expected hours of work for UC are 35. Jasumati has a portfolio of work and a website where she shows her work and advertised her services. She has tried various ways of promoting and marketing her work, but demand for her services has remained fairly constant.

Jasumati spends over half of her available time on S/E activity but it only generates a small income. On balance, looking at both hours and earnings the DM decides that the self-employment is not the main form of employment.

The DM determines that Jasumati is not gainfully S/E because her work is not her main employment.

### **Example 2**

Ann has claimed UC and the expected number of hours she can work per week are 35. She has both self-employment and PAYE work. Ann works for eight hours a week in a pub and is paid £49.60 weekly by the pub landlord as a PAYE employee. Ann also carries out sewing work from home. This work is carried out on a S/E basis. Ann normally spends about 10 hours a week on this activity and earns about £40 but the earnings vary because the level of work fluctuates. Ann can choose when she does her sewing and the amount of hours she spends doing this can change. She can take on more work and can charge different prices for her work.

Ann spends similar amounts of time on both activities. The DM determines that Ann's PAYE work is her main employment because she generates most of her income from that activity.

The DM determined that Ann's self-employment was not her main form of employment. She therefore fails to meet part of the gainful self-employment test. The DM determines that Ann is not gainfully S/E.

## **The gainful self-employment test: earnings that are self-employed earnings**

H4040 In order for the gainful self-employment test to be satisfied the claimant's earnings from their

1. trade
2. profession or
3. vocation

have to be S/E earnings<sup>1</sup>. H4010 provides guidance on what S/E earnings are.

*1 UC Regs, reg 64(1)(c)*

H4041 - H4049

## **The gainful self-employment test: organised, developed, regular and in expectation of profit**

H4050 In order to determine if the S/E activity is organised, developed, regular and carried on in expectation of profit, the DM should take into account

1. whether the activity is undertaken for financial gain
2. the number of hours spent each week on the work
3. any business plan or steps taken to increase income from the activity
4. how HMRC regard the activity
5. how much work is in the pipeline
6. whether the claimant is actively marketing or advertising for work.

The above is not exhaustive.

### **Example**

David has claimed UC and expected number of hours per week he can work are 35. He works for a supermarket for 11 hours a week and is paid £68 a week. David also works as an office cleaner. In a typical week, David earns about £110 from the cleaning business for 10 hours of work.

David is paid in cash from the office manager for cleaning the offices and arranges to pay tax on this income through self-assessment. He is responsible for buying his own equipment and arranging for someone to cover for him when he takes a holiday or falls sick. David advertised his services and is actively marketing his business in order to take on more cleaning work

David spends a similar amount of time on both activities. The DM therefore has to look at earnings in order to determine what the main form of employment is. The



earnings generated from the office cleaning work are higher than the earnings from the supermarket, so the DM determines that the office cleaning work is David's main employment.

David has a clear profit-seeking motive. He buys his own equipment and is responsible for arranging cover if he goes on holiday or falls sick, the DM determines that the earnings from his office cleaning are S/E earnings

David has a regular cleaning contract with the office, which is considered significant work in the 'pipeline'. HMRC consider David's cleaning work to be self-employment because he does a taxation self-assessment and pays VAT on this income. The DM determines that the cleaning work is organised, developed, regular and in expectation of profit.

David met all three parts of the test. He is therefore determined by the DM to be gainfully S/E.

## **Existing businesses and new businesses**

H4051 In addition, the characteristics of gainful self-employment may vary depending on whether the business is

1. an existing business which has been trading for some time **or**
2. a new business **or**
3. an existing business receiving little or no income.

H4052 An existing business may

1. have a list of regular customers
2. be registered with HMRC for Self Assessment and/or VAT
3. have accounts covering current and previous activity
4. have evidence of trading and regular income.

The decision, therefore, to determine gainful self-employment for UC purposes may be relatively straightforward. This is because the evidence shows an established business which is organised, developed and regular with S/E earnings from a trade, business or vocation as the main employment.

H4053 For a new business, the DM should consider

1. the business plan or proposal and whether there is a reasonable prospect of the business being an on-going concern in terms of an expectation of profit
2. what steps a claimant is already taking to progress their new business activity or towards carrying out work in relation to the business and whether there is work in the pipeline, for example, a list of suppliers, diary of appointments etc
3. what work has already been done and what income has been received

4. whether the claimant is making it known to potential customers that they are available to take on work, for example, marketing and advertising
5. whether the claimant has registered as S/E with HMRC (although this will not verify S/E activity for UC purposes).

### **Example 1**

When making her claim for UC, Jenny indicates that she wants to start a new wedding photography business. She has invested in camera equipment and recently completed a two week online photography course. Jenny has a portfolio of photos from two events she covered as part of her course. She has registered a domain name for a business website and engaged a web designer to design a site for her business. Jenny has also drawn up a business plan which includes plans to advertise in local bridal shops, wedding magazines and has approached a number of wedding venues with whom she hopes to establish a business relationship. She has researched wedding photographer hire prices and has developed a pricing structure for her business in line with her research. Whilst Jenny is yet to receive any commissions, the DM determines that Jenny's plans demonstrate that she is in gainful self-employment for the purposes of her claim to UC and is eligible for a start-up period.

Jenny has spent time on planning and taking steps to progress her business idea and the DM decides that on balance Jenny has demonstrated it is her main employment goal.

Jenny is providing her own equipment and will control the prices and hours she works. The DM decides that any earnings would be S/E earnings.

Jenny has demonstrated that she has put effort into planning, researching and developing her business idea and can show from her pricing structure how she intends to make a profit from the business. The DM decides that based on Jenny's evidence and steps taken the business will be developed, organised and carried on in expectation of profit.

Jenny has met all three parts of the test and the DM determines her to be gainfully S/E.

### **Example 2**

John has recently been given a modest sum of money by family members and is thinking about using this money to start a new small business. In his claim for UC he has declared that he is currently looking at becoming a market trader. He thinks he might put down money for a market stall pitch in the local market next month. However, he hasn't approached the local market office, is yet to buy any stock or identified any suppliers. He states he has designed some t-shirts himself and has

sold five or six to friends and family on an ad hoc basis but has not considered any next steps to extending this activity.

John has to date spent only around six hours in two weeks designing his t-shirts and has not spent any other time on his business idea. The DM determines that his new business is not currently his main form of employment despite the fact it may be his main employment goal in the future.

The DM does decide that John's activity is a trade as John would provide the t-shirts and paints to illustrate the designs on them.

The DM determines that John's activity currently is not developed, regular or organised as no steps have been taken beyond to fully plan or realise the business idea.

The DM determines that John is not in gainful self-employment for the purposes of his claim to UC. John has not shown that time has been spent planning and developing his business idea or that he has taken any substantial steps to progress the business beyond an idea. Whilst it is his main employment goal the DM doubts that currently it could provide John with gainful self-employment.

## **Businesses receiving little or no income**

H4054 A claimant who has already been determined to be gainfully S/E may experience times where their business is not generating much by way of an income. However, this does not mean that they are no longer gainfully S/E for the purposes of UC.

H4055 In order to determine if a claimant is still gainfully S/E, the DM should consider

1. if there is a reasonable prospect of work in the near future **and**
2. if the business is a going concern and regarded as such by
  - 2.1 the person **or**
  - 2.2 the business's bankers **or**
  - 2.3 any creditors **or**
  - 2.4 others **and**
3. if the person is genuinely available for and actively seeking alternative work **and**
4. if the person hopes or intends to restart work in the business when economic conditions improve **and**
5. if the person is undertaking any activities in connection with the self employment **and**
6. if there is work in the pipeline **and**
7. if the person is regarded as S/E by HMRC **and**

8. if the person claims to be anxious for work in the trade, profession or vocation. Is the person making it known that the business can take on work? For example,
  - 8.1 by advertising **or**
  - 8.2 by visiting potential customers **and**
9. if the interruption in question is part of the normal pattern of the
  - 9.1 person's work **or**
  - 9.2 work that the person is seeking.

Not all of these questions will be relevant to whether a person is still gainfully S/E. It will depend on the facts of the particular case.

### **Example**

Ira is in receipt of UC and has previously been determined to be gainfully S/E. He runs a business that supplies and fits doors and windows. Due to competition in the area the business has received fewer and fewer orders, until now there are none. As Ira's earnings have been consistently below the minimum income floor (see H4060), he is called back in for a Gateway Interview. Ira states that

1. he has been unable to pay the rent on his shop and the landlord is threatening eviction
2. his business has debts and the bank has advised that the business should be wound up
3. he can not find a way of boosting his trade
4. there is no work in the pipeline
5. at present he is still regarded as S/E by HMRC
6. he still has an advertisement in the Yellow Pages.

His earnings are negligible but they are derived from a trade and they are therefore S/E earnings.

Based on **1. – 6.** above, the DM determines that the work is no longer regular and there is no expectation of profit.

The DM determines that Ira is not gainfully S/E.

H4056 The DM should make a determination on gainful self-employment based on a balanced view of the evidence. These are matters of individual judgement for the DM concerned.

## Sickness

H4057 A S/E claimant will experience occasional minor illnesses like anyone else. The DM should regard periods of minor illness as part of the normal pattern of self employment.

### Example

Reuben performs as an Elvis Presley tribute act. He is registered with a number of entertainment websites and also has several pubs and restaurants who pass on work and customer recommendations. Reuben's work tends to fluctuate, with peaks in the summer season and around Christmas when he supplements his income, as a singing Father Christmas in the local shopping centre. Reuben works on average 19 hours per week and earns around £210. In December, Reuben experiences back pains and has to stop working for a brief period.

Reuben spends the majority of his time working as an Elvis tribute act and has no other income, so the DM determines this is his main employment.

Reuben is engaged in a profitable vocation. He has clients, but not an employer. The DM determines that Reuben's income is S/E income.

Reuben is engaged in work and takes steps to maintain a significant amount of work in the pipeline, actively promoting his business through the internet and asking his clients to provide recommendations. He also has a business plan that accommodates the changing demand for his services throughout the year. The DM determines that the work is organised, developed, regular and carried out in expectation of profit.

The DM considers that Reuben has met all parts of the gainful self-employment tests. Although Reuben is unwell, this period of sickness is minor and temporary and the DM regards this as part of the normal pattern of self-employment.

### Further examples

H4058 Appendix 2 provides further examples of the gainful self-employment test.

H4059

## The minimum income floor

### What the minimum income floor is

[See Memo ADM 02/20] [See Memo ADM 04/20]

H4060 The minimum income floor is an amount of earnings which a person **treated** as having in an assessment period. The minimum income floor applies<sup>1</sup> where the claimant

1. has been determined to be in gainful self-employment (see ADM H4020 et seq) **and**
2. would normally but for the minimum income floor be subject to all work-related requirements.

The application of the minimum income floor means the claimant is, or joint claimants are, treated as having a certain minimum level of income for conditionality purposes so that no work-related requirements apply.

*1 UC Regs, reg 62(1)*

H4061 The minimum income floor does not apply to claimants who are **not** gainfully S/E for UC purposes. There are also exceptions for some claimants who are gainfully S/E for UC purposes – see H4090 for guidance and see H4500 where losses are being considered. Where the claimant's actual earnings are above the minimum income floor then the claimant's actual earnings are taken into account.

#### **Example 1**

Clare has claimed UC. She works from home as a S/E piano tutor. The DM has determined that Clare is gainfully S/E for UC purposes. The DM next has to determine whether Clare's earnings from tutoring are below the minimum income floor. If her earnings are below the minimum income floor for Clare then the minimum income floor will apply to her award of UC. If Clare's earnings are above the minimum income floor then the minimum income floor does not apply to her.

#### **Example 2**

Anna has claimed UC. She occasionally sells garden produce to her friends and family. This is not regular work and she doesn't do this to achieve a profit. When she has sold goods in the past, the DM has treated the income as S/E earnings. For the purposes of UC, it has been determined that Anna is not gainfully S/E. The minimum income floor cannot apply to Anna.

#### **Example 3**

Keeley runs a small business and is receiving UC. She has been determined to be gainfully S/E and the minimum income floor applies. Keeley becomes pregnant and when her son is born she moves into the no work-related requirements group. The minimum income floor no longer applies as Keeley is not in the all work-related requirements group. Keeley understands that she must still report any S/E earnings and her work-related group will be reviewed when her son reaches the age of 1.

H4062 - H4063

H4064 A claimant who is treated as having earned income by virtue of the minimum income floor in an assessment period cannot be subject to any work-related requirements<sup>1</sup>.

*1 UC regs, reg 90(5)*

H4065 - H4069

## The minimum income floor amount

H4070 In order to determine whether the minimum income floor<sup>1</sup> applies, the DM has to work out the claimant's monthly individual threshold and / or the couple threshold<sup>2</sup>. This is sometimes referred to as the conditionality earnings threshold (CET).

*1 UC Regs, reg 62(4), reg 90(2) & (3)*

H4071 - H4072

H4073 The individual threshold for a claimant is the NMW hourly rate payable to a worker of the same age, multiplied by the expected hours of work per week for claimants who would normally be subject to all work-related requirements<sup>1</sup>.

*1 UC Regs, reg 90(2)(b)*

H4074 - H4076

H4077 The couple threshold is

1. in the case of joint claimants, the total of their individual thresholds<sup>1</sup> **or**
2. in the case of a claimant who is a member of a couple (see ADM Chapter E2) but who can claim UC as a single person, the sum of the
  - 2.1 claimant's individual threshold **and**
  - 2.2 amount a worker would be paid for 35 hours a week at the single NMW standard rate<sup>2</sup>.

### Note:

In cases where H4077 **2.** applies, the MIF is **not** applied to the ineligible claimant's actual earnings<sup>3</sup>.

*1 UC Regs, reg 90(3)(a); 2 reg 90(3)(b); 3 Reg 62(3)*

H4078 The claimant's individual threshold and the couple threshold have to be converted to a net monthly amount by

multiplying by 52 and dividing by 12 **and**

deducting such amount for income tax and NI contributions as the DM considers appropriate.

H4079 Where a single claimant's earned income is below their individual threshold in any assessment period, then the claimant is treated as having earned income equal to their individual threshold<sup>1</sup>. This is the claimant's minimum income floor.

*1 UC Regs, reg 62(2)*

### Example

Kyle is in gainful self-employment. His net monthly individual threshold is £946. This is determined by multiplying his expected hours of work by the NMW appropriate for his age. Kyle's expected hours of work are 35 and the NMW appropriate to him is £6.70 ( $35 \times 6.70 = 234.50$ ). This is then converted to a monthly amount ( $234.50 \times 52 \div 12 = £1,016$ ). An amount which the DM thinks is appropriate for tax and NI contributions is then deducted. In this particular case, the DM deducts £70.00 to leave £946 as Kyle's individual threshold.

For the purposes of UC, Kyle's monthly earnings for the current assessment period from his self-employment are £850. The DM applies the minimum income floor and treats Kyle as having earned income in the assessment period of £946.

**Note:** The figures used in the example above are for illustrative purposes only. Up to date tax and national insurance information can be found at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

H4080 Where the claimant is the member of a couple then in any assessment where

1. the claimant's earned income is less than their individual monthly threshold  
**and**
2. the couple's combined income is less than the couple's monthly threshold

the claimant has to be treated as having earned income equal to their individual monthly threshold minus any amount by which that amount of earned income and their partner's earned income would exceed the couple's monthly threshold<sup>1</sup>. This is the couple's minimum income floor.

*1 UC Regs, reg 62(3)*

### Example 1

A couple are in receipt of UC as joint claimants. The husband is in gainful self-employment and for the purposes of UC his monthly earnings for the current assessment period are £400. This is less than his individual threshold of £950. The wife has no earned income. The couple threshold is £1,900 ( $950 \times 2$ ).

The minimum income floor applies. This is because the husband's earned income of £400 is less than his individual threshold of £950. The couple's combined earned income of £400 is less than their couple threshold of £1,900.

The husband is treated as having earned income of £950 for the assessment period.

### Example 2

A couple are in receipt of UC as joint claimants. Both are in gainful self-employment. For the purposes of UC, the husband has earned income for the current assessment period of £500 and his wife has earned income for the assessment period of £1,200. Their combined earned income is therefore £1,700. The couple threshold is £1,900 (each individual threshold of £950  $\times$  2).



The minimum income floor applies. The husband is initially treated as having earned income of £950. This gives a total earned income amount for the couple of £2,150 (£950 + £1,200) which is £250 in excess of the couple threshold.

Because the combined earned income the couple are treated as having is above their couple threshold of £1,900 then the amount of earned income the husband is treated as having for the assessment period is reduced by the amount that the couple's income exceeds £950. The husband is treated as having earned income of £700.

This means that for the assessment period the husband is treated as having earned income of £700 which when added to his wife's actual earned income of £1,200 gives a combined income of £1,900.

H4081 Where a claimant is treated as having an earned income equal to the minimum income floor then any actual earnings in excess of that amount in the assessment period are taken into account<sup>1</sup>.

*1 UC Regs, reg 22, 52 & 57*

H4082 - H4089

## Exceptions

H4090 The minimum income floor does **not** apply to earned income in respect of assessment periods which fall wholly within a start-up period or begin or end in a start-up period<sup>1</sup>. ADM H4100 – H4101 provides guidance on the start-up period.

*1 UC Regs, reg 62(5)*

H4091 - H4099

## The start-up period

**[See Memo ADM 04/20]**

H4100 **[See Memo ADM 15/20]** A start-up period is a period of 12 months. It applies from the beginning of the assessment period in which the Secretary of State determines that a claimant is, for the purposes of UC, in gainful self-employment where the claimant

1. has commenced their self-employment as their main employment in the 12 months before the beginning of that assessment period **and**
2. is taking active steps to increase their S/E earnings to the level of their individual threshold<sup>1</sup>.

**Note 1:** the date in H4100 1. is the date the claimant satisfies all the relevant conditions to be found gainfully self-employed. This is **not** necessarily the same as the date that the DM makes that determination (i.e. where evidence gathering means the decision is made in a later assessment period).

**Note 2:** a start-up period can **not** be applied for any period before UC is claimed but see example 2 at H4102 where there is a short break and re-claim **within** the start-up period.

*1 UC Regs, reg 63(1)*

### Example

Kemar is in receipt of UC. His next assessment period commences on 11 November. Kemar has informed the Jobcentre that he has started a window cleaning round. This work started on 20 October. At the moment, he only has a few clients but he is hopeful that with advertising and by word of mouth, the round will grow. Kemar's earnings from window cleaning currently amount to about £60 a week and this is below Kemar's individual threshold. However, Kemar's spending 25 hours a week on this activity and is taking steps to gain more clients and increase his earnings.

The DM determines that Kemar is gainfully S/E and in the start-up period. Kemar has to report his earnings from this activity after the end of each assessment period so that his award of UC can be adjusted to take account of them.

H4101 Where a claimant is determined to be in a start-up period then the minimum income floor **cannot** apply<sup>1</sup>. However, the actual earnings from S/E have to be taken into account<sup>2</sup>.

*1 UC Regs, reg 62(5)(a); 2 reg 57*

H4102 A claimant can only have one start up period in relation to the same trade, profession or vocation on a current or previous award of UC. However if that previous start-up period

1. began more than five years before the beginning of the assessment period in which the claimant is determined to be gainfully S/E **and**

2. applied to a different trade, profession or vocation

then the Secretary of State may apply a new start-up period<sup>1</sup>.

*1 UC Regs, reg 63(2)*

### Example 1

Thomas is in receipt of UC and works as a window cleaner. The DM has determined that Thomas is gainfully S/E and in the start up period, which runs for 12 months from January to December. In March, Thomas reports that due to a lack of clients he is no longer working. In July, Thomas reports that he has resumed his window cleaning business after a competitor moved out of the area. The DM determines that Thomas cannot be in a new start up period as the latest employment did not start more than five years before the beginning of the assessment period in which the claimant was determined to be gainfully self-employed.

### Example 2

Mateusz is in receipt of UC and works as a S/E plasterer. The DM has determined that Mateusz is gainfully self employed and in the start up period, which runs from June to May. In August, Mateusz's S/E earnings increase significantly after he secures a large contract and his UC award ends. In October, Mateusz's S/E earnings reduce and he makes a successful re-claim to UC. A start up period does not end when a UC award ends and a re-claim is made within that 12 month period; it continues to run in the background. Mateusz will therefore remain in his original start-up period which has eight months remaining i.e. October to May.

### Example 3

Pep began receiving UC six years ago and began work as a S/E mechanic. The DM determined this to be gainful self-employment and applied a 12 month start up period. Pep stopped this work three years later. In the current year, the next assessment period commences on 14 September. Pep informs the Jobcentre that he started working as a S/E motorcycle courier on 17 August and has already increased the number of his clients and earnings. The DM determines that Pep is gainfully self-employed and applies a new start up period. This is because the previous start up period began more than five years before the current assessment period and the claimant is in a different trade, profession or vocation.

### Example 4

Lena began receiving UC seven years ago and started work as a S/E hairdresser. The DM determined this to be gainful self-employment and applied a 12 month start up period. Lena stopped this work four years later. In the current year, Lena informs the Jobcentre that she has started work as a S/E hairstylist. The DM does not apply a new start up period because although the previous start up period began more than five years ago, the trade, profession or vocation is the same.

H4103 The Secretary of State may end a start-up period at any time if the person is no longer

1. in gainful self-employment **or**
2. taking active steps to increase their S/E earnings to the level of their individual threshold<sup>1</sup>.

*1 UC Regs, reg 63(3)*

H4104 A Gateway Interview may be used to gather the information as to whether a claimant meets the conditions for the start-up period<sup>1</sup>.

*1 UC Regs, reg 93(f)*

H4105 - H4109

# Treatment of self-employed earnings

## General

H4110 Earnings derived from a

1. trade **or**
2. profession **or**
3. vocation

and that are not employed earnings are known as S/E earnings<sup>1</sup>. Even though the claimant may not be determined to be in gainful self-employment, if the claimant has S/E earnings then they have to be taken into account.

*1 UC Regs, reg 57(1)*

H4111 S/E earnings have to be calculated in respect of an assessment period. The amount of a claimant's S/E earnings is the gross profit minus deductions for

1. class 2 or class 4 contributions **and**
2. income tax **and**
3. any relievable pension contributions<sup>1</sup>.

*1 UC Regs, reg 57(2)*

**Note:** See H4158 and H4500 for the treatment of self-employed earnings in digital/ full service areas from **11.4.18**.

H4112

## Method of calculation

H4113 The steps to calculate S/E earnings for an assessment period are to

1. deduct from the actual receipts received in the assessment period any **permitted expenses**. This gives the gross profit **and**
2. deduct from the gross profit any
  - 2.1 class 2 or class 4 contributions paid to HMRC during the assessment period **and**
  - 2.2 income tax paid to HMRC during the assessment period **and**
  - 2.3 relievable pension contributions made in the assessment period.

The figure that is left is the earnings that should be taken into account.

**Note:** See H4158 and H4500 for the treatment of self-employed earnings in digital/ full service areas from **11.4.18**.

H4114 - H4119

## Class 2 and class 4 contributions

- H4120 A class 2 contribution is a flat rate contribution but a higher rate is paid by share fishermen.
- H4121 A class 4 contribution is a deduction of a fixed percentage of the annual profits of a business when these profits fall within lower and upper levels. These payments are in addition to class 2 contributions.

H4122 Any payment made to HMRC during the assessment period of

1. class 2 contributions **or**
2. class 4 contributions

in respect of the trade, profession or vocation has to be deducted from the gross profits<sup>1</sup>.

*1 UC Regs, reg 57(2)(a)*

**Note:** From April 2019 Class 2 contributions are due to be abolished and Class 4 contributions are due to be reformed.

## Income tax

- H4123 Any payment of income tax made during the assessment period to HMRC in respect of the trade, profession or vocation has to be deducted from the gross profits<sup>1</sup>.

*1 UC Regs, reg 57(2)(a)*

**Note:** From April 2016 the Scottish Government can set its own rate of income tax<sup>1</sup>. DMs should ensure that the correct tax rate is used – see the appendix to ADM chapter H3.

*1 the Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016*

## Relievable pension contributions

- H4124 A relievable pension contribution means<sup>1</sup> a contribution paid to a registered pension scheme by or on behalf of a member of that scheme. This means that the contribution can be paid by the individual member, who must be a relevant UK individual, or by a third party on behalf of the individual member.

*1 UC Regs, reg 53(1); Finance Act 2004, s 188*

H4125 A relevant UK individual means<sup>1</sup>

1. a person with earnings chargeable to UK income tax **or**
2. a person resident in the UK for some time of the year **or**
3. a person was resident in the UK both at some time during the five tax years immediately before that year and when that person became a member of the pension scheme **or**

4. a person, or their spouse, who has for the tax year general earnings from overseas Crown employment subject to UK tax.

*1 Finance Act 2004, s 189*

H4126 A contribution will not be a relievable pension contribution if it falls into

1. contributions after age 75<sup>1</sup>
2. life assurance premium contributions<sup>2</sup>
3. contributions paid by employers<sup>3</sup>
4. age related or minimum payments<sup>4</sup>.

*1 Finance Act 2004, s 188(3)(a); 2 s 188(3)(aa); 3 s 188(3)(b); 4 s 188(3)(c)*

H4127 Any relievable pension contribution made by the person in the assessment period should be deducted from the gross profits. However, this does not apply if a deduction has already been made in respect of relievable pension contributions when calculating the claimant's employed earnings<sup>1</sup>.

*1 UC Regs, reg 57(2)*

H4128 - H4129

## Gross profits

H4130 The gross profits of the trade, profession or vocation are the actual receipts from the business in the assessment period **minus** any deductions for permitted expenses<sup>1</sup>.

*1 UC Regs, reg 57*

H4131 Actual receipts from the business include<sup>1</sup>

1. receipts in kind **and**
2. any refund or repayment of
  - 2.1 income tax **or**
  - 2.2 VAT **or**
  - 2.3 national insurance contributions

relating to the trade, profession or vocation.

*1 UC Regs, reg 57(4)*

H4132 - H4139

## Calculation of monthly earnings – cash flow

H4140 To calculate the amount of S/E earnings the DM will need to be satisfied with

1. the receipts **actually received**, not money owed to the business **and**
2. expenses defrayed, that is, **actually paid for**, not unpaid bills

for the assessment period that has just ended. This is known as cash basis model (or “cash in/cash out”) and evidence should be presented on a cash flow basis.

H4141 A claimant who is S/E or whose partner is S/E should be asked to report monthly between 7 days before and 14 days after the end date of each assessment period details of

1. **actual** receipts income **and**
2. allowable expenditure of expenses

during the assessment period that has just come to an end.

H4142 - H4156

## Method of calculation

H4157 To calculate the earnings for an assessment period the DM

1. should establish the **actual receipts** of the business during the assessment period **and**
2. deduct from the actual receipts the **permitted expenses** that have been paid out during the assessment period **and**
3. deduct from any remaining figure amounts for
  - 3.1 income tax **and**
  - 3.2 class 2 or class 4 contributions **and**
  - 3.3 relievable pension contributions.

The figure that is left is the earnings that should be taken into account.

### Digital/ Full Service areas only (from 11.4.18)

H4158 To calculate the earnings for an assessment period the DM should apply the following calculation<sup>1</sup>:

1. For each trade, profession or vocation carried on by the claimant:
  - 1.1 take the **actual receipts** in that assessment period **or**
  - 1.2 where the claimant is carrying on a trade, profession or vocation in a partnership (ADM H4330), take the amount of profit or loss attributable to claimant’s **share** in the partnership and **deduct**
  - 1.3 any **permitted expenses**<sup>2</sup>

*1 UC Regs, reg 57(2); 2 reg 58 or 59*

2. **add** together the amounts in step 1 where the claimant is carrying on more than one trade, profession or vocation.

3. **deduct** from the amount in step 1 or 2 any payments made by the claimant in that assessment period to HMRC in respect of each trade, profession or vocation for:

3.1 national insurance contributions;

3.2 income tax

4. where the amount calculated by step 3 is:

4.1 greater than nil, **deduct** any relievable pension contributions<sup>1</sup> made by the claimant in that AP, unless a deduction has already been made in the calculation of the claimant's employed earnings<sup>2</sup>.

If the amount calculated by this step is **nil** or a **negative amount**, the claimant's earnings for the assessment period are **nil** and **ignore** the following steps;

4.2 **nil** the claimant's self-employed earnings for that assessment period is **nil**;

4.3 a **negative amount** that is the unused loss (see H4503) amount for the following assessment period.

*1 UC Regs, reg 53(1); 2 Reg 57(2)*

5. If the amount remaining after the calculation at step 4.1 is

5.1 **greater** than nil, **deduct** any unused losses, using the oldest loss first where those losses include those from a number of previous assessment periods.

6. If the amount remaining after the calculation at step 5.1 is:

6.1 **greater** than nil, that will be the amount of the claimant's self-employed earnings for that assessment period;

6.2 **nil** the claimant's self-employed earnings for that AP are **nil**;

6.3 a **negative amount**, that is the unused loss amount for the following assessment period.

*1 UC Regs, reg 57*

**Note:** see H4500 for the treatment of unused losses in digital/ live service areas.

H4159

## Actual receipts

H4160 Any payment actually received by the business during the assessment period, regardless of when it is earned should be included as an actual receipt.



H4161 The actual receipts of a business include

1. any payments for goods and services provided
2. earnings payable abroad
3. personal drawings
4. sale of certain business assets
5. tips and gratuities
6. payments in kind
7. any VAT receipts
8. refund or repayment of income tax or national insurance contributions.

H4162

### **Payments received for goods and services provided**

H4163 All

1. cash **and**
2. cheque **and**
3. credit card payments

received in return for goods and services supplied, should be included as an actual receipt of the business.

### **Earnings payable abroad**

H4164 Money that is due to be paid to a business in a country outside the UK should be included as an actual receipt only when it is received by the business, for example when it is paid

1. to any branch or official representative of the business **or**
2. into any business account.

H4165 - H4167

### **Personal drawings**

H4168 A S/E person may draw money from the business. These drawings, known as personal drawings, are in anticipation of profits or business income and should not be deducted from the gross receipts of the business. It is possible for personal drawings to exceed the eventual profit.

H4169

H4170 If personal drawings are declared the DM should establish if the amount has been deducted from the amount shown as the actual receipt. If it has, the amount of the drawings should be added back to the amount of the actual receipts.

H4171 - H4180

### **Sale of certain business assets**

H4181 Where

1. the purchase of an asset has been deducted as an expense in any assessment period **and**
2. in a subsequent assessment period
  - 2.1 the asset is sold **or**
  - 2.2 ceases to be used for the purposes of the trade, profession or vocation carried on by the claimant

the proceeds of sale (or if **2.2** applies, what would have been received if the asset was sold at market value) are to be treated as a receipt in that subsequent assessment period<sup>1</sup>.

**Note:** See ADM H4199 where an expense has been incurred for more than one purpose.

*1 UC Regs, reg 57(5)*

#### **Example 1**

Kay is gainfully S/E and in receipt of UC. She bought a laptop to manage her financial accounts and for maintaining customer records for her business. The cost of the laptop was a permitted expense in the assessment period in which the cost was incurred. Five months later, Kay decides to sell the laptop and receives £200 for it. This amount is treated as a receipt in the assessment period in which the laptop is sold.

#### **Example 2**

Ken is gainfully S/E and in receipt of UC. He bought a laptop and intended to use 50% for personal use and 50% for business use. Ken could only claim 50% of the cost as an expense. Ken later sold the laptop for £200 but only 50% of the amount received (i.e. £100) can be regarded as a receipt in the assessment period in which the laptop is sold.

#### **Example 3**

Joel purchased some display material for his business for £400. In the assessment period in which he paid out and declared the expense he only received £100 as cash in. The expenses declared reduced Joel's S/E earnings for that assessment period

from £100 to zero. Joel sells the display material when it is no longer needed. He is required to report the entire amount of the sale as a receipt in the assessment period in which the display material is sold, not just the proportion (25%) that earlier reduced his earnings to nil.

### **Tips and gratuities**

H4182 Tips or gratuities received in response to the service provided, for example as a hairdresser, taxi driver or coach driver, should be included in the actual receipts of the business.

H4183 Any tips or gratuities that are made as a gift unconnected to the self-employment, for example, on personal grounds should not be included in the actual receipts of the business.

### **Receipts in kind**

H4184 If a S/E person is paid in kind the DM should decide a monetary value equal to what would have been paid and include this amount in the actual receipts of the business<sup>1</sup>.

*1 UC Regs, reg 57(4)*

### **Example**

Terry is a S/E electrician in receipt of UC. He does some work for a local farmer. The farmer pays Terry for the work in the form of farm produce.

The DM values the produce at the cost of the work carried out by Terry and includes that amount in the gross receipts of the business.

H4185 - H4189

### **Capital receipts**

H4190 Capital receipts do **not** form part of the actual receipts of the business. For example,

1. funds introduced by the owner of the business for the purposes of financing the business **and**
2. loan capital borrowed from third parties for financing purposes.

### **Accounts**

H4191 A person may submit a set of accounts as evidence of S/E earnings. Accounts provide some, but not all, of the information required by the DM to decide the amount of the actual receipts and expenses paid for.

- H4192 A set of accounts consists of two main statements
1. the **balance sheet**: that is, a statement of the financial position of a business at a given date **and**
  2. the **profit and loss account**: that is, a summary of the results of a business's transactions for a period ending on the date of the balance sheet.
- H4193 Accounts are prepared using accounting principles. Accounts may include **anticipated** receipts and expenses for the accounting period. The anticipated amounts are not
1. gross receipts as they have not been received by the business **or**
  2. allowable expenses as they have not been paid for.
- H4194 If accounts are submitted as evidence the S/E person should be asked to provide evidence of actual amounts received and expenses paid so that the evidence can be converted into a cash flow basis. The S/E person can do this by providing
1. accounts that are calculated on a cash flow basis **or**
  2. evidence of the actual receipts and expenses paid.
- H4195 The S/E person should be asked any questions that cannot be resolved. It may be necessary for the S/E person to provide further supporting evidence, for example
1. bank receipts
  2. purchase receipts
  3. expenses for a different assessment period.
- H4196 As profit and loss accounts are prepared using normal accounting principles, they include certain entries that would not be included in a cash flow account. For example
1. the value of stock at the start and end of the accounting period
  2. money owed to the business by debtors
  3. money owed by the business to creditors
  4. depreciation of assets of the business.

As the DM is considering the S/E person's cash flow, these will not be allowable expenses.

## **Permitted expenses**

### **Conditions for deducting permitted expenses**

- H4197 When calculating the gross profits in respect of an assessment period, the DM should deduct from the actual receipts any business expense that<sup>1</sup>

1. was paid out wholly and exclusively for the purposes of the business **and**
2. was paid out during the assessment period **and**
3. was reasonably incurred **and**
4. is an allowable expense.

*1 UC Regs, reg 58(1)*

### **Wholly and exclusively**

H4198 An expense is wholly and exclusively paid out when it has been incurred only for the purpose of the business<sup>1</sup>. Any such payment should be deducted in full, subject to H4197 **2. - 4.**

*1 UC Regs, reg 58(1)*

H4199 Where an expense has been incurred for more than one purpose, an identifiable part or proportion has to have been incurred wholly and exclusively for the purposes of the trade, profession or vocation<sup>1</sup>.

*1 UC regs, reg 58(1)(b)*

### **Permitted deductions for expenses**

H4200 The deductions allowed<sup>1</sup> when calculating S/E earnings are those deductions

1. paid in the assessment period **and**
2. wholly and exclusively incurred (or where incurred for more than one purpose, an identifiable part or portion has been wholly and exclusively incurred) for the purposes of that
  - 2.1 trade **or**
  - 2.2 profession **or**
  - 2.3 vocation **and**
3. incurred reasonably.

*1 UC Regs, reg 58(1)*

H4201 Expenses that have been incurred unreasonably during the assessment period cannot be allowed as deductions for permitted expenses<sup>1</sup> (see H4210)

*1 UC Regs, reg 58(1)*

H4202 The expenses which may be allowed include

1. regular costs such as rent or wages
2. purchase of stock
3. utilities, phone and travel costs (but see H4203 as appropriate)
4. expenditure on the purchase, lease or acquisition of
  - 4.1 equipment

## 4.2 tools

### 5. VAT<sup>1</sup>.

**Note:** The above is not exhaustive.

*1 UC Regs, reg 58(2)*

H4203 A deduction cannot be allowed for expenditure on the purchase, lease or acquisition of a car (including a mini cab and taxi but not a black cab or Hackney Carriage)<sup>1</sup>.

*1 UC Regs, reg 59(2)*

H4204 In H4203 car means<sup>1</sup> a mechanically propelled road vehicle but not a

1. motor cycle **or**
2. vehicle designed mainly for the movement of goods or burden of any description **or**
3. vehicle of a type not commonly used as a private vehicle.

*1 UC Regs, reg 53; Capital Allowances Act 2001, s 268A*

H4205 Motor cycle means<sup>1</sup> a mechanically propelled vehicle, not being an invalid carriage, with less than four wheels and the weight of which unladen does not exceed 410 kilograms.

*1 UC Regs, reg 53; Capital Allowances Act 2001, s 268A*

## **Expenses for both business and private use**

H4206 If expenditure is for both business and private use the claimant should apportion the cost, where applicable in reference to any apportionment agreed with HMRC or based on the claimant's own judgement. Only the portion of the expenditure that is wholly attributable to the business can be deducted.

H4207 It is a common practice for a S/E person to put private expenses through a business account. If a set of accounts has been submitted as evidence of expenses the DM should establish the amount of the expenses paid out for the business.

H4208 The DM should normally accept the evidence of

1. the claimant **or**
2. an accountant **or**
3. any apportionment already agreed by HMRC for tax and contribution purposes<sup>1</sup>.

*1 R(FC) 1/91; R(IS) 13/91*

H4209

## **Incurred unreasonably**

H4210 The term “incurred unreasonably” is not defined in legislation. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

1. appropriate to the business **and**
2. necessary to the business **and**
3. not excessive.

The DM should consider the nature of the business, level of trading and if there are any employees.

H4211 To determine what is reasonable the DM should have regard to the circumstances of each individual's case<sup>1</sup>, including the level of the person's earnings<sup>2</sup>.

*1 R(P) 2/54; 2 R(G) 1/56*

H4212 If expenditure on a particular item is necessary to enable the person to run the business, the whole of that expenditure may be a deductible expense unless there is evidence that it is excessive<sup>1</sup>.

*1 R(G) 7/62*

### **Example**

Simon is a painter and decorator requires transport in order to travel to jobs and carry his equipment and materials. He can use his car for this but decides to purchase a small second hand van because he wishes to keep the car for family use. The cost of the van is a deductible expense because it is not excessive.

H4213 If the DM is not satisfied that the whole of an expense is reasonably incurred only the part that is considered to be reasonable should be allowed as a deduction against gross profits.

## **Regular costs**

H4214 If the conditions in H4200 are met, all day to day expenses of a business are allowable, including<sup>1</sup>

1. rent of business premises
2. employee's wages before any deductions, including wages payable to a partner, but not a business partner
3. cleaning of business premises
4. accountancy fees
5. employer's contribution to an employee's pension scheme
6. employer's secondary class 1 contributions
7. heating and lighting

8. hire or rental costs
9. income spent on the repair of a business asset
10. legal fees for the running of the business
11. payment in kind for work done for the business - the monetary value is allowed
12. council tax, water charges and insurance premiums on the business premises
13. stationery
14. stock purchases
15. advertising
16. telephone bills
17. sundries
18. transport, for example business use of a vehicle including petrol costs, road fund license, insurance and servicing (but see H4230-34)
19. VAT
20. payment of interest in relation to a business loan

if the DM is satisfied that the expenses are allowable. This list is not exhaustive.

*1 UC Regs, reg 58(2)*

### **Value added tax**

H4215 Payments of VAT can be a permitted deduction from S/E earnings<sup>1</sup> and repayments of VAT by HMRC can be a receipt into the business<sup>2</sup>. HMRC allows individuals a choice in how they treat VAT receipts in their cash basis. Individuals registered for VAT can either report earnings

1. inclusive of VAT and deduct a VAT payment to HMRC **or**
2. exclusive of VAT and not permit a deduction of a VAT payment to HMRC.

*1 UC Regs, reg 58(2); 2 reg 57(4)*

H4216 For UC purposes, claimants have the same choice. Claimants are expected to be consistent with their choice of VAT inclusive and exclusive in each assessment period.

### **Payment of interest on business loans**

H4217 A deduction can be made for a payment of interest in relation to a loan taken out for the purposes of the

1. trade
2. profession **or**



3. vocation.

The deduction cannot exceed £41 in total in respect of any amount of interest paid in the assessment period<sup>1</sup>. The £41 figure is a cumulative limit and covers the total amount of interest payable across any and all relevant loans relating to the trade, profession or vocation.

**Note:** Interest on loans may include but is not limited to credit card and overdraft interest and charges where the original expense related to the trade, profession or vocation.

*1 UC Regs, reg 58(3A)*

H4218 - H4219

### **Partner's earnings from the business**

H4220 The earnings of a partner (but not a business partner) who is employed in the business should be allowed as a business expense if the expense has been incurred reasonably. The wage should not be added back to the business accounts to offset any loss.

#### **Example**

Rose runs a dress-making business from home. She is in receipt of UC. Her business is making a loss of £50 per week. The accounts show that Rose pays her husband £45 per week for book keeping and other tasks. The DM is satisfied that the amount paid to her husband is a reasonable expense.

For UC purposes their income is

Rose	NIL
husband	£45
total	£45 per week.

H4221 - H4229

### **Deductions for mileage and use of home as business premises**

H4230 A permitted expense can be made as a flat rate deduction where a person is carrying on a trade, profession or vocation and incurs expenses in relation to the use of

1. a motor vehicle **or**
2. accommodation occupied as their home<sup>1</sup>.

*1 UC Regs, reg 59(2) & (3)*

H4231 The flat rate deduction is made from the actual receipts in the assessment period<sup>1</sup>.

*1 UC Regs, reg 59(2)*

**Note:** See DMG 4234 where the motor vehicle is a car that has not been specially adapted for business use; i.e. a mini cab or taxi (but not a black cab or Hackney Carriage). These vehicles must use the flat rate mileage deduction; other vehicles can choose to use actual expenses or the flat rate mileage deduction.

## **Mileage**

H4232 The flat rate deductions for mileage covered in the assessment period is

1. 45 pence per mile for the first 833 miles **and**
2. 25 pence per mile for every mile in excess of 833 miles

in respect of a car, van or other motor vehicle (but not a motorcycle)<sup>1</sup>.

*1 UC Regs, reg 59(2)(a)*

H4233 The flat deduction for mileage covered in the assessment period by a motorcycle is 24 pence per mile<sup>1</sup>.

*1 UC Regs, reg 59(2)(b)*

H4234 Where a deduction is made in respect of mileage in an assessment period then no other deduction can be made as a permitted expense with regards to the

1. acquisition **or**
2. use

of a motor vehicle during that assessment period<sup>1</sup>.

**Note:** If the motor vehicle is a car (including a mini cab or taxi but not a black cab or Hackney Carriage) then this is the only deduction allowed for the acquisition or use of that vehicle.

*1 UC Regs, reg 59(2)*

### **Example 1:**

Boris drives a black cab in central London. Boris decides that due to the nature of his work and the distances covered that he would prefer to use flat rate deductions rather than actual expenses, when reporting his mileage for UC purposes.

**Example 2:** Azeem drives a taxi for his local private hire company. Azeem must use flat rate deductions when reporting his mileage for UC purposes.

H4235 - H4239

## Use of the home

H4240 A person may use the accommodation occupied as the home as part of their business. Where a person uses the home for income generating activities related to their self-employment then a deduction can be made as a permitted expense. The amount of deduction depends upon how many hours in the assessment period that a person made use of their home for income generating activities. This deduction is instead of the actual expenses incurred in the use of the home<sup>1</sup>.

*1 UC Regs, reg 59(3)*

H4241 Income generating activities include

1. providing services to a customer
2. general business administration which is essential for the day to day operation of the enterprise (such as filing invoices, recording receipts and payments and stocktaking) **and**
3. action to secure business (such as sales and marketing).

### Example

Wanda is an artist and specialises in portraits. When Wanda is commissioned to do a work, she often does most of the sketching and painting at home. The hours that she does in an assessment period are hours of income generating activity.

H4242 Income generating activities do not include using the home for

1. storage
2. time spent on completing tax returns for HMRC purposes
3. being on call or available to undertake work.

### Example 1

Roger is a taxi driver and has his own private hire business. The hours that Roger is at home waiting for customers to ring him to book a journey do not count as hours of income generating activity.

### Example 2

Scott has a market stall selling DVDs, CDs and computer games. When the market is not open, Scott stores his stock in a spare room at home. The storage of his stock is not an income generating activity.

H4243 The flat rate deduction is

1. £10 for at least 25 hours but no more than 50 hours
2. £18 for more than 50 hours but no more than 100 hours
3. £26 for more than 100 hours

in an assessment period<sup>1</sup>.

*1 UC Regs, reg 59(3)*

H4244 - H4249

### **Personal use of business premises**

H4250 Where a person occupies premises which is used by them mainly for their S/E work but also lives in it as their home, the deduction for permitted expenses which can be made is the amount that would be allowed if the premises were used wholly and exclusively for that S/E work but reduced by an amount dependant on the number of people also making use of those premises<sup>1</sup>.

*1 UC Regs, reg 59(4)*

H4251 The rate of the reduction in respect of the assessment period is<sup>1</sup>

1. £350 for one person
2. £500 for two persons **or**
3. £650 for more than two persons.

*1 UC Regs, reg 59(4)*

#### **Example 1**

Fred is S/E and works from home as a music teacher. He uses the downstairs of the house as a music studio and lives upstairs. When reporting his income for the purposes of his award of UC, Fred says that he incurred S/E expenses relating to the home of £800 in his most recent assessment period. Fred shares his home with his civil partner, Andre. Andre is not involved in Fred's business. Fred claims £800 in permitted expenses and reduces this amount by £500 as both he and Andre occupy the premises.

#### **Example 2**

Victoria is a pub landlord. The downstairs of the building where she lives is the pub and she lives upstairs with her husband and two children. When reporting her expenses for her award of UC, Victoria reports expenses of £3,500 for the latest assessment period. Victoria decides that trying to apportion these expenses between the pub and home upstairs is not possible but is not sure what to claim. The DM decides that the permitted expenses should be reduced by £650 because there are three or more people occupying the premises.

H4252 - H4259

### **Expenses not allowed**

H4260 Expenses that should not be allowed are<sup>1</sup>

1. expenditure on non-depreciating assets including
  - 1.1 property

- 1.2 shares
- 1.3 other assets held for investment purposes
- 2. any loss incurred in respect of a previous assessment period
- 3. repayment of capital in relation to a loan taken out for the purposes of the trade, profession or vocation
- 4. expenses for business entertainment.

*1 UC Regs, reg 58(3)*

### **Expenditure on non-depreciating capital assets**

H4261 Depreciation of an asset is the amount that the value of that asset is estimated to have reduced, due to age or wear and tear. Expenditure on assets which have been purchased by the business as an investment cannot be allowed as a permitted expense<sup>1</sup>.

*1 UC Regs, reg 58(3)(a)*

H4262 If there are fixed assets, accounts will always show depreciation as a business expense. The DM should not allow depreciation as a business expense.

### **Loss incurred in respect of a previous assessment period**

H4263 The DM should not allow as a permitted expense any loss incurred in respect of a previous assessment period<sup>1</sup>.

*1 UC Regs, reg 58(3)(b)*

H4264 - H4269

### **Loss incurred in any other employment**

H4270 A person may

- 1. have more than one employment as S/E **or**
- 2. be both S/E and be an employed earner, for example a company director.

The earnings from each employment should be assessed separately.

H4271 Any business loss in one employment should **not** be offset against the earnings of another employment. Also, any loss made by one member of the family should not be offset against the earnings of another member.

#### **Example**

Ryan is in receipt of UC. His wife is a market trader and a S/E music teacher. The market stall runs at a loss. The DM

- 1. considers that the loss from the market stall is not an allowable expense against the actual receipts from teaching music **and**
- 2. calculates the net profit from each self-employment separately.

## Repayment of capital on business loans

H4272 No deduction for a permitted expense can be made for the repayment of capital with regards to a loan taken out for the purposes of the trade, business or vocation<sup>1</sup>.

*1 UC Regs, reg 58(3)(c)*

H4273 - H4274

## Business entertainment

H4275 Any expense claimed for providing business entertainment, for example

1. business lunches **or**
2. hospitality in connection with the business

should not be allowed as a permitted expense<sup>1</sup>.

*1 UC Regs, reg 58(3)(d)*

H4276 – H4329

## Particular forms of self-employment

### Partnerships

H4330 Partners are similar to sole traders, except that ownership and control of the business is shared between two or more people.

H4331 People can enter into a partnership under an agreement that may be written, for example a deed of partnership, verbal or implied. A deed of partnership includes details of how any profit or loss is shared between the partners. In the absence of an agreement any profit should be shared equally among the partners<sup>1</sup>.

*1 Partnership Act 1890, s 24*

H4332 The conditions under which a partnership is formed, operates or ends, are governed by the terms of a partnership deed or agreement together with the provisions of the Partnership Act 1890. For most purposes, the terms of the deed or agreement prevail over the provisions of the Act. Where a deed or agreement exists, it becomes a legal document and its interpretation is a matter of law.

H4333 The legal status of a partnership should not be confused with that of a company, in that a partnership has no legal personality in law. At any one time the assets and liabilities of the partnership are (subject to the partnership deed or agreement and the Partnership Act 1890), the joint and several assets and liabilities of the partners.

**Note:** Scots Law on the legal status of a partnership differs. In Scotland a partnership is a separate legal entity<sup>1</sup>, distinct from the partners who carry out its business. DMs should refer any cases to DMA Leeds if further guidance is needed.

*1 Partnership Act 1890, s 4(2)*

H4334 A partnership does not necessarily end when it ceases trading. It must be formally dissolved. The partnership deed or Partnership Act 1890 may continue to impose rights and obligations on the parties following dissolution, providing further time for the winding up of its affairs. Further delays may result from legal challenges concerning the partnership's affairs.

H4335 Where a partnership ends and the claimant has finished employment in the business, a reasonable period of time is allowed for the claimant to dispose of any assets before they are regarded as capital for benefit purposes. In considering that period of time, regard should be had to any legal obligations and restrictions imposed by the partnership deed or the Partnership Act 1890.

H4336 - H4353

## **Sub-contractors**

H4354 A sub-contractor is a S/E person who enters into a contract with another contractor to do a particular job, and is most commonly found in the construction industry.

### **Example**

A firm of builders contract to build a house extension for Tony. They sub-contract the electrical work to Lee. Lee is a S/E sub-contractor and not an employee of either the building firm or Tony.

When Lee completes the work he moves to a different contract that may be for further work with the building firm or for a different contractor.

H4355 If a S/E sub-contractor claims UC the DM should consider

1. the guidance at H4010 et seq **and**
2. if the S/E sub-contractor is gainfully employed for the purposes of UC.

H4356 - H4359

## **Company analogous to a partnership or one person business**

### **Introduction**

H4360 A claimant who is in a position similar to a sole owner or partner in relation to a

1. company which is carrying on a trade **or**
2. property business

has to be treated as the sole owner or partner<sup>1</sup>.

H4361 The effect of H4360 is that where a claimant has been found to be employed as a company director in a position analogous to a sole trader or partner, the claimant is treated in the same way as a claimant who runs a business or owns a property on their own account. For the purposes of UC, a person trading through a company is treated in the same way as one who has not set up a company to conduct their business. ADM Chapter H1 provides guidance on the treatment of capital in these cases.

**Note:** see DMG 27010 for the definition of a company director.

H4362 Whether a person who has shares in a company is similar to a company director, sole owner or partner in the business of that company is a question of fact in each case<sup>1</sup>. A person who does not work for the company can be like a sole owner or partner<sup>2</sup>.

*1 R(IS) 8/92; 2 R(IS) 8/92*

H4363 The sole owner of a business has total influence over the day to day running of the business. When a business is jointly owned the number of partners is normally small and the influence a partner has over the day to day running of the business will depend on the terms of the partnership agreement. So for a person to be like a

1. sole owner in the business of the company that person should have total influence over the day to day running of the company, such as when a person owns 99% of the shares in a company<sup>1</sup> **and**
2. partner in the business of the company the
  - 2.1 number of shareholders in the company should be small **and**
  - 2.2 person should have some meaningful influence over the day to day running of the company<sup>2</sup>.

*1 R(IS) 13/93; 2 R(IS) 8/92*

H4364 A person who has some shares in a company which has a large number of shareholders, such as Tesco, is an investor because such a person has no influence over the day to day running of the company<sup>1</sup>.

*1 R(IS) 8/92*

## Property business

H4365 A property business means a property business in the UK or overseas where tax is paid on the profits of the business<sup>1</sup>. The company is in the business of generating income from land either in the UK or abroad.

*1 UC Regs, reg 77(6); Corporation Tax Act 2009, s 204*

H4366 Where a person is a shareholder in a company which owns property as an investment and the company receives income in the form of rent then that will be a property business.



H4367 A claimant who is in a position similar to that of a company director, sole owner or partner in a property business

1. has the value of their shares in the company disregarded when working out their capital **and**
2. is treated as having capital which is equal to
  - 2.1 the value of the capital of that company if the person is treated as the sole owner **or**
  - 2.2 the person's share of the value of the capital of that company if the person is treated as a partner<sup>1</sup>.

**Note:** ADM Chapter H1 provides guidance on the treatment of capital.

*1 UC Regs, reg 77(2)*

### **Example**

Pablo is the major shareholder in a company which owns a cottage at the seaside. The property is an investment and generates income from holidaymakers who rent the cottage. For the purposes of UC, the value of Pablo's shares in the company are disregarded. However, the DM has to treat Pablo as being in possession of capital equal to the value of the capital of the company.

H4368 - H4369

## **Trading business**

H4370 A trading business is a business with a profit seeking motive (regardless of whether or not a profit is actually made). Usually, trading involves the provision of goods or services to customers on a commercial basis.

H4371 A claimant who is in a position similar to that of a company director, sole owner or partner in a company which is carrying on a trade

1. has the value of their shares in the company disregarded when working out their capital **and**
2. is treated as having capital which is equal to
  - 2.1 the value of the capital of that company if the person is treated as the sole owner **or**
  - 2.2 the person's share of the value of the capital of that company if the person is treated as a partner<sup>1</sup>.

**Note:** ADM Chapter H1 provides guidance on the treatment of capital.

*1 UC Regs, reg 77(2)*

H4372 If the claimant is undertaking activities in the course of the business of that company, the capital the person is treated as having under H4371 **2.** is disregarded<sup>1</sup>.

*1 UC Regs, reg 77(3)(a)*

H4373 A person who is a shareholder in a company is undertaking activities in the course of the business of the company if that person is doing some work, no matter how little, for that company. So a person who takes telephone messages and receives mail for the company is undertaking activities in the course of the business of that company<sup>1</sup>.

*1 R(IS) 13/93*

## Earned income

H4374 Where H4360 applies to a company which is carrying on a trade<sup>1</sup>

1. the income of the company or the person's share of that income has to be treated as the claimants S/E income and calculated in the same way as S/E earnings **and**
2. the person has to be treated as in gainful self-employment (see H4020 et seq) if their activities in the course of the trade are their main employment.

**Note 1:** the S/E earnings in 1. are in addition to any earnings the claimant may have received in their position as a director or employee of the company<sup>2</sup>.

*1 UC Regs, reg 77(3)(b) & (c); 2 reg 77(4)*

**Note 2:** a company director may receive earnings and also income from shares, dividends or capital in that company. For the definition of a company director see DMG 27010,

**Note 3:** a company director can be self employed and an employed earner, This should be determined in the usual way.

H4375 If H4374 2. applies then the minimum income floor has to be applied if the claimant's earnings under H4374 1. are below the minimum amount<sup>1</sup>.

**Note:** If applicable, the start-up period can be applied in place of the minimum income floor (see H4000 et seq).

*1 UC Regs, reg 77(3)(c)*

H4376 H4374 does not apply to a property business<sup>1</sup>.

*1 UC Regs, reg 77(3)*

### Example 1

Ezgjan is one of two company directors in a small freight delivery company, which was formed three months before he claimed UC. Ezgjan owns a 50% share of the company and has a meaningful influence over the running of the business. He declares that this is his main employment, where he works for 60 hours a week but does not draw a salary. The DM decides that Ezgjan stands in a position analogous to that of a sole owner or partner in relation to a company that is carrying on a trade. Subsequently, Ezgjan is treated as having a 50% share of the income of the company, calculated under the normal rules for determining self employed earnings. He is also treated as being in gainful self-employment and, as the business began

trading within 12 months of the AP in which the DM is making the decision and the claimant is taking active steps to increase his earnings, the DM places Ezgjan in the start-up period.

### **Example 2**

Claudia owns a small wedding dress shop with her business partner. They each own a 50% share in the company which was formed 18 months before Claudia claimed UC. Claudia declares she has a meaningful influence over the running of the business and that this is her main employment, where she works for 40 hours a week but does not draw a salary. The DM decides that Claudia stands in a position analogous to that of a sole owner or partner in relation to a company that is carrying on a trade. Claudia is treated as having a 50% share of the income of the company, calculated under the normal rules for determining self employed earnings. She is also treated as being in gainful self employment and accordingly, the minimum income floor is applied.

## **Exceptions**

H4377 **[See Memo ADM 22/18]** H4374 does not apply to claimants who derive income from a company where the income is employed earnings for the purposes of UC. This means that income

1. made to workers by intermediaries **and**
2. from managed service companies

is not S/E earnings<sup>1</sup>.

*1 UC Regs, reg 77(5); Income Tax (Earnings and Pensions) Act 2003, Part 2, Chapters 8 & 9*

H4378 ADM Chapter H3 provides guidance on employed earnings.

H4379 - H4499

## **Self-Employed Losses**

### **Introduction**

H4500 From 11.4.18 the general principle for calculating earned income (H4006) in digital/full service areas is modified in certain circumstances. Where the calculation of the claimant's self-employed earnings (H4158) results in a loss, that figure can be carried forward to the next assessment period.

### **Unused Losses**

H4501 For the purposes of this guidance In UC an unused loss does not include the loss from an assessment period that began before **11.4.18**.

H4502 A claimant has an unused loss in any previous AP, which will be used to calculate their self-employed earnings in the current AP<sup>1</sup> as set out at H4158, if:

1. the calculation results in a negative amount (a loss) **and**
2. the loss has not been extinguished in any subsequent AP.

*1 UC Regs, reg 57A*

**Note:** a loss is extinguished if no amount of that loss remains after it has been deducted in the calculation at H4158 **5**.

## Minimum Income Floor

H4503 The application of the minimum income floor<sup>1</sup> is not affected by the calculation of surplus earnings or where a self-employed claimant has an unused loss in an AP. It is the level of earnings that is calculated after the application of the surplus earnings or unused losses guidance in this memo that should be used to determine whether the minimum income floor applies. If a self-employed claimant has a loss in any AP, the level of earnings for that AP will be nil and the minimum income floor will be applied.

*1 UC Regs, reg 62*

### Example 1

Derek is self-employed market trader in receipt of UC. In his current AP he reports actual receipts of £750, permitted expenses of £2,300 (including stock he has bought to sell over the coming months), and that he has paid income tax and national insurance contributions of £200.

His self-employed earnings are calculated as follows:

**AP 1:** £750 (receipts) - £2,300 (expenses) - £200 (tax & NI) = **-£1,750**.

Derek's self-employed earnings figure for UC is nil in this AP. The minimum income floor is £987 and is applied. Derek carries forward a loss of £1,750 to the following AP.

**AP 2:** £800 (receipts) – £500 (expenses) - £200 (tax & NI) - £1,750 (unused losses) = **-£1,650**.

Derek's self-employed earnings figure for UC is nil and the minimum income floor of £987 applies. Derek carries forward a loss of £1,650 to the following AP.

**AP 3 to AP 8:** Derek's income and expenditure remain steady throughout the following 6 APs, reducing his unused losses by £100 in each AP. His self-employed earnings remain at nil and the minimum income floor of £987 applies throughout. At the end of AP 8 Derek has unused losses of **£1,050** to carry forward to **AP 9**.

**AP9:** £2,000 (receipts) - £500 (expenses) - £200 (tax & NI) - £1,050 (unused losses) = **£250**.

Derek has a good trading month which extinguishes his unused losses. His self-employed earnings for this AP are £250, still below the minimum income floor of £987, which continues to apply.

### **Example 2**

Derek is a market trader (business 1). He also has a second business running an antique shop (business 2).

**AP1:** Derek reports the following:

Business 1: £750 (receipts), £1,300 (expenses) & £200 (tax & NI).

Business 2: £1,500 (receipts), £750 (expenses) & £150 (tax & NI).

His self-employed earnings for UC is calculated as follows:

£2,250 (combined receipts) - £2,050 (combined expenses) - £350 (combined tax & NI) = **-£150**.

Derek's self-employed earnings for UC in this AP are nil and the minimum income floor of £987 applies. He carries forward a loss of £150 to the following AP.

**AP 2:** Derek reports the following:

Business 1: £750 (receipts), £500 (expenses) & £200 (tax & NI).

Business 2: £2,000 (receipts), £750 (expenses) & £150 (tax & NI).

His self-employed earnings for UC are calculated as follows:

£2,750 (combined receipts) - £1,250 (combined expenses) - £350 (combined tax & NI) - £150 (unused losses) = **£1,000**.

Derek's unused losses have been extinguished and his self-employed earnings for this AP are £1,000, as they exceed his minimum income floor of £987.

**Note:** see appendix 3 for another example of a self-employed claimant.

### **Breaks in UC entitlement**

H4504 Where the claimant was previously entitled to UC, and the last day of entitlement in that award fell:

1. within the 6 months **before** the first day of entitlement in respect of the new award

then providing the claimant supplies such information as may be required, the DM may treat:

2. the APs in the previous award **and**

3. any months between the previous award and the current award in respect of which a claim has been made

as APs under the current award.

**Note:** there is no time limit on a loss that may be carried forward.

### **Example**

Rodney is self-employed and runs a small printing shop. He receives UC and in the current AP running from 27th March to 26th of April, he has an unused loss of £1,800. Rodney decides that he no longer wishes to claim UC and his award ends on 26th April.

Rodney re-claims UC on 28th August. As this is within 6 months of Rodney's last day of entitlement in his previous award, the DM decides to treat the APs in the previous UC award and those months between as APs for the purpose of the new claim. This means that the unused loss of £1,800 from his previous UC award will be used to calculate his self-employed earnings for his new claim.

**AP1:** Rodney reports the following in relation to the new claim:

£1,250 (receipts), £500 (expenses) & £200 (tax & NI).

His self-employed earnings for UC are calculated as follows:

£1,250 (receipts) - £500 (expenses) - £200 (tax & NI) - £1,800 (unused losses) = -  
**£1,250.**

Rodney's self-employed earnings for this AP are nil and the minimum income floor of £1,100 applies. He carries forward an unused loss of £1,250 to the following AP.

**AP2:** Rodney's earnings and expenditure remain stable. His UC award is calculated as follows:

£1,250 (receipts) - £500 (expenses) - £200 (tax & NI) - £1,250 (unused losses) = -  
**£700.**

Rodney's self-employed earnings for this AP are nil and the minimum income floor of £1,100 applies. He carries forward an unused loss of £700 to the following AP.

**AP3:** Rodney's earnings and expenditure continue to remain stable. His UC award is calculated as follows:

£1,250 (receipts) - £500 (expenses) - £200 (tax & NI) - £700 (unused losses) = -  
**£150.**

Rodney's self-employed earnings for this AP are nil and the minimum income floor of £1,100 applies. He carries forward a surplus of £150.

**AP4:** Rodney's circumstances are unchanged and UC award is calculated as follows:

£1,250 (receipts) - £500 (expenses) - £200 (tax & NI) - £150 (unused losses) =  
**£400.**

Rodney's unused losses have been extinguished and his self-employed earnings for this AP are £400. This is below the minimum income floor of £1,100, which is applied for this AP.

H4505 - H4999

# Appendix 1

## National Minimum Wage Hourly Rates

Year	25 and over	21 and over	18 to 20	Under 18	Apprentice
2012	-	£6.19	£4.98	£3.68	£2.65
2013	-	£6.31	£5.03	£3.72	£2.68
2014	-	£6.50	£5.13	£3.79	£2.73
2015	-	£6.70	£5.30	£3.87	£3.30
2016	£7.20*	£6.70	£5.30	£3.87	£3.30
2016	£7.20*	£6.95	£5.55	£4.00	£3.40
2017	£7.50*	£7.05	£5.60	£4.05	£3.50
2018	£7.83*	£7.38	£5.90	£4.20	£3.70

\* The National Minimum Wage for those aged 25 and over (also known as the National Living Wage) was introduced from 1.4.16.



# Appendix 2

## Further examples of the gainful self-employment test

### Example 1

**Outline: Both S/E and PAYE activity being carried out with no significant difference between the hours worked or between the income received and the S/E activity being regular, organised, developed and carried out in expectation of profit.**

Paul works as an office manager for a local charity. He works 12 hours a week and is paid £84 a week. He also works at home, typing documents from audio. He can decide the number of hours he works and how much work he undertakes. He uses his own computer and broadband for this and is paid per minute of audio he types up. Paul estimates he spends around 12 hours a week typing and earns around £90 a week on average. Paul says he prefers his office work, but the charity only needs a part-time office manager. Paul says the typing is to supplement his income and that the flexibility it allows means he can arrange to be at home when his children finish school.

#### Part 1

Paul spends a similar amount of time on both activities. The DM therefore has to look at earnings in order to determine what the main form of employment is. The earnings generated from the two employments prove inconclusive. The DM concludes, on balance, that typing is not Paul's main employment goal as he has stated that he is not interested in increasing his output from typing. Therefore, self-employment is not Paul's main employment.

#### Part 2

Paul has a clear profit-seeking motive and he uses his own equipment. The DM determines that the earnings from his office cleaning are S/E earnings

#### Part 3

Paul undertakes his typing regularly and a contract with firm supplying his work. The DM determines that the work is organised, regular and in expectation of profit.

#### Determination

Paul has not met part 1 of the test and he is therefore determined by the DM not to be gainfully S/E.

## Example 2

**Outline: Claimant carries out both S/E and PAYE activities. The S/E activity takes up the majority of available working hours and is organised, developed, regular and carried out in expectation of profit.**

Lizzie has claimed UC and her expected hours of work per week are 35. Lizzie is an electrician and works in the construction industry. Some of Lizzie's work is on a sub-contracting basis and some of her work is as an employee.

Lizzie's weekly hours of work vary over the year - they depend on the availability of work and the weather. Over the course of a typical year, Lizzie works on average 30 hours a week. She estimates that about a third of her time is on an employed basis and the rest on a S/E basis.

### Part 1

Lizzie spends the majority of her time on the S/E activity, so the DM considers this to be her main employment.

### Part 2

Lizzie's work is clearly carried out in the expectation of profit in a recognised vocation/trade. Her sub-contracting income is not employed earnings. The DM determines that her income from sub-contracted work is S/E earnings.

### Part 3

Lizzie actively promotes her sub-contracted work. She has a list of regular customers and has separate accounts for her sub-contract work, which also contain evidence of regular income. The DM determines that the subcontracted work is organised, developed, regular and in expectation of profit.

### Determination

Lizzie met all three parts of the tests, so is therefore determined by the DM to be gainfully S/E.

## Example 3

**Outline: S/E activity only is carried out and takes up the majority of available working hours but does not provide much income and is not the claimant's main employment goal.**

Ed is an engineer who has had regular employment over the years. He was made redundant 2 months ago and is looking to find employment locally in the engineering industry. Ed also breeds rare-breed ducks and, for many years, has been selling his ducks to local butchers. He estimates that he used to spend around 10 hours a

week caring for his ducks but, since he lost his job, he has increased this to around 18 hours a week. Ed's estimates his income from selling his ducks averages around £80 a week.

### **Part 1**

Ed spends over half of his available time on S/E activity but it generates a relatively small income and he is actively looking for work in his previous area of employment. On balance, the DM decides that the S/E is not Ed's main employment goal and not his main form of employment.

### **Part 2**

The earnings derived from his ducks are determined by the DM to be S/E earnings as Ed's work is a trade, he provides her own equipment and can control the hours he works.

### **Part 3**

The DM decides that Ed's S/E work is developed, regular, organised and whilst providing limited income is carried out in expectation of profit.

### **Determination**

Ed has failed to meet Part 1 of the gainful S/E test and the DM determines that he is not gainfully S/E.

## **Example 4**

**Outline: Claimant is experiencing low to no income from S/E activity due to bad weather. The activity normally takes up her available hours of work and claimant can demonstrate that the business can still provide gainful S/E when weather improves.**

Sharonjit is the sole owner of a small roofing firm. Normally Sharonjit spends 40 hours a week running the business but work has stopped temporarily because of the bad weather. The income from the business has recently therefore dropped dramatically to the point now where no income is received from the business.

Sharonjit claims UC and brings to her gateway interview:

1. a letter from her bank stating that they regard his business as a going concern
2. purchase orders for materials relating to significant amounts of work she has in the pipeline, waiting for the weather to improve.
3. VAT statements from HMRC, evidencing that HMRC regard her as self-employed.
4. A local newspaper to show that she is advertising to bring in more work.

**Part 1**

While Sharonjit is currently engaged in a low number of hours work, there is evidence that her SE business is her main employment goal. The DM determines that the roofing firm is Sharonjit's main employment.

**Part 2**

Sharonjit is engaged in a trade/vocation in expectation of profit. There is no other employer, so the DM determines that the income is S/E earnings.

**Part 3**

Sharonjit has a clear account of why her business is experiencing difficulty. She is demonstrating concern at the issues facing her business. The bank and HMRC recognise the business as a going concern. Sharonjit also has an expectation of work restarting. The DM has doubts about when Sharonjit will be able to pick up the work she has in the pipeline, but on balance the DM determines that the work is organised, developed, regular and carried out in expectation of profit.

**Determination**

The DM considers that Sharonjit has met all of the parts of the test and is determined by the DM to be gainfully S/E.

# Appendix 3

## Further examples of Surplus Earnings and Self-Employed Losses

### Example 1 – Employed with work allowance

Alana is 32 and has 1 child. She has regular monthly earnings of £500 and no unearned income. Her UC amount is £317.82, her child element is £277.08 and her work allowance is £397.00. The de-minimis is £300.

Her normal UC award is calculated as follows:

1. Maximum UC amount -  $£317.82 + 277.08 = £594.90$
2.  $£500$  (earned income) -  $£397$  work allowance =  $£103.00$ .
3.  $£103.00 \times 0.63$  (taper) =  $£64.89$
4.  $£594.90 - £64.89 = \mathbf{£530.01}$  UC award

### AP 1

Alana receives a net performance bonus of £1,238.65, making her total earned income for this AP £1,738.65. This ends her UC entitlement but surplus earnings will apply to any subsequent claims made within six months.

Her UC award is calculated as follows:

1. Maximum UC amount -  $£317.82 + 277.08 = £594.90$
2.  $£1,738.65$  (earned income) -  $£397$  (work allowance) =  $£1,341.65$ .
3.  $£1,341.65 \times 0.63$  (taper) =  $£845.24$
4.  $£594.90 - £845.24 = \mathbf{-£250.34}$  (excess income)

The original surplus is calculated as follows:

1. the nil UC threshold is  $£594.90 - £0.00 \div 63 \times 100 = £944.29 + £397 = £1,341.29$
2. the relevant threshold is  $£1,341.29 + £300 = £1,641.29$
3. the original surplus is  $£1,738.65 - £1,641.29 = \mathbf{£97.36}$

### AP 2: Reclaim received

Her UC award is calculated as follows:

1. Maximum UC amount -  $\pounds 317.82 + 277.08 = \pounds 594.90$
2.  $\pounds 97.36$  (surplus earnings) +  $\pounds 500$  (actual earned income) =  $\pounds 597.36$
3.  $\pounds 597.36$  (total earned income) -  $\pounds 397$  (work allowance) =  $\pounds 200.36$ .
4.  $\pounds 200.36 \times 0.63$  (taper) =  $\pounds 126.23$
5.  $\pounds 594.90 - \pounds 126.23 = \pounds 468.67$  UC award (the surplus is eroded).

### Example 2 – Couple Claim

Peter, 54 and Jackie, 41 are a couple with no children. Peter has regular monthly earnings of  $\pounds 500$  and Jackie's regular monthly earnings are  $\pounds 600$ . They pay rent of  $\pounds 300$  per month. Their UC amount is  $\pounds 498.89$ , their housing element is  $\pounds 300$  and the de-minimis is  $\pounds 300$ .

Their normal UC award is calculated as follows:

1. Maximum UC amount -  $\pounds 498.89 + \pounds 300 = \pounds 798.89$
2.  $\pounds 1,100$  (earned income)  $\times 0.63$  (taper) =  $\pounds 693.00$
3.  $\pounds 798.89 - \pounds 693.00 = \pounds 105.89$  UC award

### AP 1

Jackie receives a one off retainer payment of  $\pounds 775.43$  making their total household earned income for this AP  $\pounds 1875.43$ . This ends their UC entitlement but surplus earnings will apply to any subsequent claims made within six months.

Their UC award is calculated as follows:

1. Maximum UC amount -  $\pounds 798.89$
2.  $\pounds 1,875.43$  (total earned income)  $\times 0.63$  (taper) =  $\pounds 1,181.52$
3.  $\pounds 798.89 - \pounds 1,181.52 = -\pounds 383.63$  (excess income)

The original surplus is calculated as follows:

1. the nil UC threshold is  $\pounds 798.89 - \pounds 0.00 \div 63 \times 100 = \underline{\pounds 1,268.08}$
2. the relevant threshold is  $\pounds 1,268.08 + \pounds 300 = \underline{\pounds 1,568.08}$
3. the original surplus is  $\pounds 1,875.43 - \pounds 1,568.08 = \pounds 307.35$

### AP2 – Reclaim received (1<sup>st</sup>)

Their UC award is calculated as follows:

1. Maximum UC amount - £498.89 + £300 = £798.89
2. £307.35 (surplus earnings) + £1,100 (actual earned income) = £1,407.35
3. £1,407.35 (total earned income) x 0.63 (taper) = £886.63
4. £798.89 - £886.63 = **-£87.74** (excess income)

There is no entitlement to UC on this claim but surplus earnings would no longer apply to any subsequent claims as their total earned income no longer exceeds the relevant threshold (the surplus has been eroded):

1. the nil UC threshold is  $£798.89 - £0.00 \div 63 \times 100 = \underline{£1,268.08}$
2. the relevant threshold is  $£1,268.08 + £300 = \underline{£1,568.08}$
3. £1,407.35 (total earned income) is **less** than £1,568.08 (the relevant threshold).

### Example 3 – weekly paid claimant

Elsa is 27 with 1 child and regular weekly earnings of £330 She normally receives four weekly wages in each AP. Her UC amount is £317.82, her child element is £277.08 and her work allowance is £397. The de-minimis is £300.

A typical UC award is calculated as follows:

1. Maximum UC amount - £317.82 + £277.08 = £594.90
2. £1,320 (earned income) - £397 (work allowance) = £923
3. £923 x 0.63 (taper) = £581.49
4. £594.90 - £581.49 = **£13.41** UC award

### AP1

Elsa receives 5 weekly wages in this AP making her total earned income £1,650. This ends UC entitlement but surplus earnings will apply to any subsequent claims made within six months.

Her UC award is calculated as follows:

1. Maximum UC amount - £317.82 + £277.08 = £594.90
2. £1,650 (earned income) - £397 (work allowance) = £1,253
3. £1,253 x 0.63 (taper) = £789.39

4.  $£594.90 - £789.39 = \textbf{-£194.49}$  (excess income)

The original surplus is calculated as follows:

1. the nil UC threshold is  $£594.90 - £0.00 \div 63 \times 100 = £944.29 + £397 = £1,341.29$
2. the relevant threshold is  $£1,341.29 + £300 = £1,641.29$
3. the original surplus is  $£1,650 - £1,641.29 = \textbf{£8.71}$ .

#### **AP2 – reclaim received (1st)**

Elsa reclaims UC the following month. She receives 4 weekly wages in this AP, otherwise her circumstances are unchanged.

Her UC award is calculated as follows:

1. Maximum UC amount -  $£317.82 + £277.08 = £594.90$
2.  $£8.71$  (surplus earnings) +  $£1,320$  (actual earned income) =  $£1,328.71$
3.  $£1,328.71$  (total earned income) -  $£397$  (work allowance) =  $£931.71$
4.  $£931.71 \times 0.63$  (taper) =  $£586.98$
5.  $£594.90 - £586.98 = \textbf{£7.92}$  UC award

Elsa is therefore entitled to UC, surplus earnings would no longer apply to any subsequent claims as the total earned income no longer exceeds the relevant threshold (the surplus has been eroded):

1. the nil UC threshold is  $£594.90 - £0.00 \div 63 \times 100 + £397 = £1,341.29$
2. the relevant threshold is  $£1,341.29 + £300 = £1,641.29$
3.  $£1,328.71$  (total earned income) is **less** than  $£1,641.29$  (the relevant threshold).

In cases where a claimant is paid weekly, it is likely this pattern of surplus earnings will repeat itself during the course of a year. Where that occurs the claimant will have to submit a new claim each time until the surplus is eroded.

#### **Example 4 – self-employed surplus and loss**

Tiana is a 38 year old self-employed photographer, with a long established business. She is deemed gainfully self-employed for UC purposes and is subject to a minimum income floor of  $£1,048.17$ . Tiana's regular monthly earnings are  $£690$ . Her UC amount is  $£317.82$ , her housing element is  $£787.80$  and the de-minimis is  $£300$ .



A typical UC award is calculated as follows:

1. Maximum UC amount -  $£317.82 + £787.80 = £1,105.62$
2.  $£1,048.17$  earnings (£690 actual earned income less than the Minimum Income Floor)
3.  $£1,048.17 \times 0.63$  (taper) =  $£660.35$
4.  $£1,105.62 - £660.35 = \mathbf{£445.27}$  UC award

#### **AP1**

Tiana reports  $£2,864.67$  of earnings due to completion and payment of a large contract in this AP. This ends UC entitlement but surplus earnings will apply to any subsequent claims made within six months.

Her UC award is calculated as follows:

1. Maximum UC amount -  $£317.82 + £787.80 = £1,105.62$
2.  $£2,864.67$  (earned income)  $\times 0.63$  (taper) =  $£1,804.74$
3.  $£1,105.62 - £1,804.74 = \mathbf{-£699.12}$  (excess income)

The original surplus is calculated as follows:

1. the nil UC threshold is  $£1,105.62 - £0.00 \div 63 \times 100 = £1,754.95$
2. the relevant threshold is  $£1,754.95 + £300 = £2,054.95$
3. the original surplus is  $£2,864.67 - £2,054.95 = \mathbf{£809.72}$ .

#### **AP2 – reclaim (1st)**

Tiana reclaims UC and reports a loss of  $£350$ , with no other changes in her circumstances.

Her UC award is calculated as follows:

1. Maximum UC amount -  $£317.82 + £787.80 = £1,105.62$
2. the Minimum Income Floor applies  $£1,048.17$

This is because

- 2.1 her actual earnings are nil **and**
- 2.2 her original surplus

are less than the Minimum Income Floor

3.  $\text{£}1,048.17 \times 0.63 \text{ (taper)} = \text{£}660.35$
4.  $\text{£}1,105.62 - \text{£}660.35 = \text{£}445.27$  UC award

The surplus is eroded as it does not exceed the relevant threshold:

1.  $\text{£}809.72 > \text{£}2,054.95$

The loss of £350 is carried forward to the next AP and the guidance at paragraphs H4158 onwards of this chapter will apply to calculate Tiana's earnings for that AP.

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**